IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

Crl.MC.No. 2168 of 2007()

CMP.1130/2007 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM

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PETITIONER:

THE GLOBAL SHIPPING AGENCIES (INDIA)
PVT. LTD., PLOT NO.10 A, NIHAT HOUSE,BRISTOW ROAD,
W/ISLAND, KOCHI.

BY ADV. SRI.P.K.RAVISANKAR

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. OLAM EXPORTERS (INDIA) LTD., KOLLAM.

3. SHERRY K.MATHEW, S/O. MATHEW,
KAKKUZHIYIL HOUSE, KUNNAMPALLY KAVU,
PANCHIKADAVU VILLAGE, KOTTAYAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ
SRI.S.SACHITHANANDA PAI

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/07/2007 ALONG WITH CRMC NO. 1985 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.Nos.2168 & 1985 of 2007

Dated this the 11th day of July, 2007

O R D E R

These Crl.M.Cs are filed by the rival claimants in an application for release of property under Section 451 Cr.P.C. Article in question is a large quantity of coffee beans. M/s.Global Shipping Agencies (India) Pvt. Ltd., the petitioner in Crl.M.C.No.2168 of 2007 have a case that coffee beans intended for transportation were stolen from their container by the accused persons, who had allegedly sold such coffee beans to the petitioner in Crl.M.C.No.1985 of 2007. The petitioner in Crl.M.C.No.1985 of 2007 claims to be a bona fide purchaser of the coffee beans. According to him, he has documents to show that he had purchased the coffee beans not from the accused in question but from other customers of his. On the basis of the confession of the accused concerned, the coffee beans have been allegedly seized. Specific identification of the coffee seeds does not appear to be possible now. In these circumstances,the learned Magistrate by the impugned order directed that the article can be released to the petitioner in Crl.M.C.No.2168 of 2007 on condition that he executes a bond for Rs.2 lakhs. There is a further direction that the coffee beans must be produced as and when directed.

2. Crl.M.C.No.2168 of 2007 is filed against the condition that the coffee beans must be produced back as and when directed. It is submitted that the condition is unrealistic as it would oblige the petitioner to keep the same in his possession until the disposal of the case. Crl.M.C.No.1985 of 2007 is filed complaining about the direction to release the coffee beans to the petitioner in Crl.M.C.No.2168 of 2007. The petitioner in Crl.M.C.No.1985 of 2007 prays that there may be a direction to release the coffee beans to him subject to appropriate directions and conditions. He even offers to deposit the amount of Rs.2 lakhs in court as condition for such release.

3. Not to be left behind, the petitioner in Crl.M.C.No.2168 of 2007 also offers to deposit the amount of Rs.2 lakhs in an attempt to claim the coffee beans for himself.

4. On the basis of the submissions of both sides, I am satisfied that the successful party can be directed to pay in court the amount of Rs.2 lakhs which will ultimately be released to the successful party after the trial. Taking all the circumstances into account, I am satisfied that the petitioner in Crl.M.C.No.1985 of 2007 from whose possession the coffee beans was seized is the best person to be preferred for release of the coffee beans.

5. I take note of the submission of the learned counsel for the petitioner in Crl.M.C No.2168 of 2007 that there may be a direction to keep samples of the coffee beans in court for the purpose of future identification, if necessary. Directions to that effect can be issued. I am also satisfied that it is not necessary to insist that the successful party must return the coffee beans as such to the court.

6. In the result, Crl.M.C.No.1985 of 2007 is allowed and Crl.M.C.No.2168 of 2007 is dismissed and the following revised directions are issued.

i) The learned Magistrate shall forthwith take sufficient quantity of the coffee beans as sample for future identification in the course of trial. They shall be appropriately preserved and kept.

ii) The petitioner in Crl.M.C.No.1985 of 2007 shall deposit an amount of Rs.2 lakhs before the learned Magistrate whereupon the learned Magistrate shall release the coffee beans less the sample taken to that petitioner ;

iii) The amount shall be kept in deposit in any nationalised bank and that the principal amount along with interest on maturity shall be payable and can be released to the party entitled to the possession of coffee beans.

7. The learned counsel for the petitioner in Crl.M.C.No.2168 of 2007 expresses a doubt that the petitioner in Crl.M.C.No.1985 of

2007 may not deposit the amount immediately and therefore appropriate safeguards may be provided to avoid deterioration and loss of the coffee beans. I direct that if the petr in Crl.M.C.No.1985 of 2007 does not deposit the amount of Rs.2 lakhs within a period of two weeks from today, the learned Magistrate shall release the coffee beans to the petitioner in Crl.M.C.No.2168 of 2007 on deposit of the amount of Rs.2 lakhs.

(R.BASANT, JUDGE)

rtr/-